

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
FOURTH DIVISION

Walden Fleet Group, Inc., Southview Chevrolet, Co., and Denny Hecker's Cadillac – Pontiac – GMC, Inc,

Plaintiffs,

-VS-

GMAC LLC,

Defendant.

AFFIDAVIT

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

1. Christopher Boyles, being first duly sworn, deposes and states as follows:
2. I am employed by GMAC Inc., as Director of Commercial Lending and make this affidavit in connection with Defendant's Notice of Removal of this matter from Minnesota District Court (4th Judicial District – Hennepin County) to United States District Court. Specifically, this affidavit sets out the proper name and residence of Defendant as well as the amount in controversy in this matter.
3. During some of period of time it provided financing to Plaintiffs, Defendant was a limited liability company with a principal place of business in the State of Michigan. However, as of June 30, 2009, Defendant converted to a corporation under the laws of the State of Delaware and is now known as GMAC Inc.

4. The substantive claim in Plaintiffs' Complaint is that GMAC received funds in connection with the sales of motor vehicles at Plaintiffs' respective automobile dealerships and that such funds should be paid to either the state of Minnesota for taxes and license fees or to lien holders.

5. Alternatively, Plaintiffs seek damages in an unspecified amount, which is apparently to be measured by the amounts received by GMAC that Plaintiffs claim should be paid to others.

6. Plaintiffs assert in their Complaint that in April, 2009, they became aware that GMAC was in possession of such funds and requested that GMAC make payment. (See paragraph 15 of the Complaint).

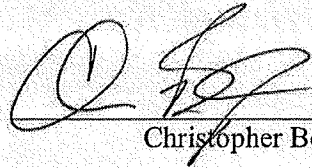
7. In fact, on April 16, 2009 - prior to bringing the instant case - Plaintiffs' counsel wrote to GMAC's counsel claiming that GMAC had possession of funds for taxes, licenses and lien payoffs and demanding that GMAC provide "an immediate plan to remit these funds". The April 16 letter included an attached spreadsheet, which set the amount Plaintiffs were claiming at \$310,686.93. A copy of the letter and spreadsheet are attached hereto as Exhibit A.

8. GMAC agreed that certain funds it received did relate to taxes and licenses. By letter dated April 17, 2009, GMAC's counsel provided Plaintiffs' counsel a spreadsheet detailing the names of purchasers, vehicle identification numbers and the amounts that GMAC had received that were arguably attributable to taxes and license fees. Further, GMAC sent checks to each of the plaintiff dealerships for the amounts set out in the spreadsheet. The total amount sent to Plaintiffs was \$73,768.48. Plaintiffs received and cashed all three checks. (Attached hereto as

Exhibit B, is a copy of the April 17, 2009 letter to Plaintiffs counsel along with the spreadsheet.¹

Attached hereto as Exhibit C is a sheet containing copies of the three canceled checks.)

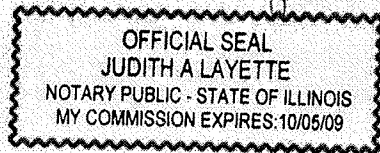
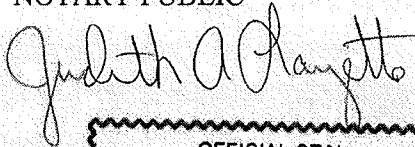
9. GMAC has denied and continues to deny that it has any obligations for lien payoffs or that it has possession of any other funds arguably attributable to taxes and license fees.



Christopher Boyles

Subscribed and sworn to before me
this 19th day of August, 2009.

NOTARY PUBLIC



¹ The identities of the buyers are contained in the spreadsheet sent to plaintiffs' counsel. For reasons of privacy, the buyers' identities have been redacted from the attached exhibit.

Mohrman & Kaardal, P.A.

*A Professional Association
Of Attorneys and Counsellors at Law*

*33 South Sixth Street
Suite 4100
Minneapolis, Minnesota 55402*

*Telephone: (612) 341-1074
Fax: (612) 341-1076*

FACSIMILE COVER LETTER

SENT TO: William W. Haag, Esq. **FACSIMILE** (612) 338-8690
NO.:

SENT BY: William F. Mohrman, Esq. **DATE:** April 16, 2009

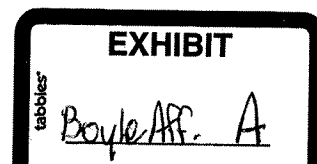
SUBJECT GMAC / Hecker (Pine City, Stillwater, Southview)

PAGES: 4 (including this sheet)

MESSAGE:

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MOHRMAN & KAARDAL, P.A.

ATTORNEYS AND COUNSELORS AT LAW

33 SOUTH SIXTH STREET
SUITE 4100
MINNEAPOLIS, MINNESOTA 55402

WILLIAM F. MOHRMAN

TELEPHONE: 612/341-1074
FACSIMILE: 612/341-1076
WRITER'S E-MAIL: MOHRMAN@MKLAW.COM

April 16, 2009

Via Facsimile and U.S. Mail

Michael W. Haag, Esq.
Foley & Mansfield, PLLP
250 Marquette Avenue, Suite 1200
Minneapolis, MN 55401

**Re: Unauthorized seizure of client trust funds for Stillwater Cadillac, Pine City
GM, and Southview Chevrolet**

Dear Mr. Haag:

We ask that you forward the enclosed correspondence to your client. As you know, we represent the interests of Stillwater Cadillac, Pine City GM, and Southview Chevrolet (hereinafter "Dealers") as they relate to GMAC's wrongful retention of Dealers' customer trust funds for the payment for tax, title and license, and vehicle lien pay-offs. As you must be well aware, neither Dealers nor GMAC has any property interest in the trust funds which are held in trust for Dealers' clients. It is hornbook law that a lien, even a blanket lien, can only extend to property of the secured debtor. The funds described on the spreadsheet attached as Exhibit A to this letter were received from Dealers' customers in trust to make the tax and title payments and to receive licenses for these sold vehicles. In many cases, Dealers' customers are driving on the expired 21-day temporary permits and GMAC is currently exposing these unwitting customers to additional liability for expired plates and related concerns. In addition, Dealers' customers' vehicles are at risk of their lenders exercising repossession rights on the vehicles for missed payments which would cause serious liability issues for all parties involved under Minnesota's customer protection statutes.

The Minnesota Attorney General's office has already received many complaints relating to these past due lien pay-offs and unpaid tax, title, and license issues. As a result, we expect to receive a full investigation by the attorney general's office and appropriate remedial actions taken by the office. Once we are contacted by the Attorney General, we will immediately refer them to GMAC as the true party responsible for the wrongful withholding of these client trust funds.

Michael W. Haag, Esq.
April 16, 2009
Page 2

Dealers demand an immediate plan to remit these funds and make the necessary payments and pay-offs no later than 5:00 p.m. CST on Friday, April 17, 2009. Please do not hesitate to contact the undersigned with any questions or comments regarding any of the matters or enclosure discussed above.

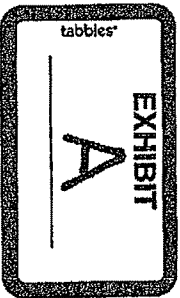
Very truly yours,

s/WFM

William F. Mohrman

WFM/mf
Enclosure
cc: Erik P. Dove, Esq.

GMAC Held Funds					
As of 4/14/09					
	Tax, Title & License	Vehicle Lien Payoffs	Lease Payoffs	Total \$ Held	
Stillwater Cadillac	\$ 44,212.64	\$ 165,155.53	\$ 13,112.84	\$ 222,481.01	
Pine City GM	\$ 5,775.30	\$ 20,569.44	\$ -	\$ 26,344.74	
Southview Chevrolet	\$ 38,064.50	\$ 23,796.68	\$ -	\$ 61,861.18	
	\$ 88,052.44	\$ 209,521.65	\$ 13,112.84	\$ 310,686.93	



***** -COMM. JOURNAL- ***** DATE APR-17-2009 TIME 08:37 *****

MODE = MEMORY TRANSMISSION

START=APR-17 08:35

END=APR-17 08:37

FILE NO.=602

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-FOLEY AND MANSFIELD -

***** -FOLEYMANSFIELD - ***** 612 338 8690- *****

FOLEY & MANSFIELD

Attorneys at Law

Chicago • Detroit • Los Angeles • Miami • Minneapolis • New York • St. Louis • San Francisco

PH: (612) 338-8788

FAX: (612) 338-8690

FACSIMILE

TO:	William F. Mohrman, Esq.	FAX #:	(612) 341-1076
RE:	GMAC / Hecker (Pine City, Stillwater, Southview)		
OUR FILE:	1905-54		
FROM:	Michael W. Haag, Esq.	PAGES:	4
DATE:	April 17, 2009	TIME:	

COMMENTS: See attached correspondence of today's date.

PRIVILEGED & CONFIDENTIAL

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Phone (612) 338-8788 Fax (612) 338-8690
www.foleymansfield.com
250 Marquette Avenue Suite 1200 Minneapolis MN 55401

EXHIBIT

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Boyle AFF B

FOLEY & MANSFIELD

Attorneys at Law

Chicago • Detroit • Los Angeles • Miami • Minneapolis • New York • St. Louis • San Francisco

Michael W. Haag
Direct Dial: 612-349-9856
mhaag@foleymansfield.com

April 17, 2009

VIA FACSIMILE

Mr. William F. Mohrman
33 South Sixth Street
Suite 4100
Minneapolis, MN 55402-3601

Re: GMAC / Hecker (Pine City, Stillwater, Southview)
Our File No.: 1905-54

Dear Mr. Mohrman:

GMAC acknowledges your April 16, 2009 letter claiming that GMAC is holding certain funds in trust. GMAC has already discussed the issue of taxes and licenses with the dealership personnel at all 3 dealerships as well as Mr. Dove. Before your letter, GMAC had already committed to sending checks to each of the dealerships for the tax and license fees actually in the possession of GMAC.

GMAC expects to have these checks in hand today and will send them overnight via Fed Ex directly to Mr. Dove. Based in information received from the dealerships, GMAC has prepared a spreadsheet showing the amounts to be paid to each dealership, broken down by customer and VIN, and I have enclosed a printout of that. You should be aware that GMAC's calculations do not exactly match the numbers you provided, but your client can check the details for what is being paid.

You also assert that GMAC has other funds belonging to customers relating to customers' lien or lease payoffs. Such payoffs are usually handled at the dealership. GMAC's interest is simply receiving the loan amount on the sold vehicle. And to the extent any surplus on a vehicle sale was sent to GMAC, it applied that surplus to reduce the dealership's out of trust amount. GMAC has no documents or other information which suggest it is holding lien or lease payoff money in trust for customers. If the dealerships have documents to support these claims, please provide them directly to GMAC for its review.

Very truly yours,


MICHAEL W. HAAG

GMAC / HECKER TAX / REGISTRATION DETAIL				
VIN	Customer	Tax	Reg.	Total
HECKER CADILLAC				
127085		\$ 1,719.47	\$ 93.00	\$ 1,812.47
368362		\$ 455.00	\$ 616.75	\$ 1,071.75
174563		\$ 845.00	\$ 37.75	\$ 882.75
142352		\$ 464.13	\$ 168.00	\$ 632.13
363542		\$ 828.43	\$ 127.75	\$ 956.18
83960		\$ 937.11	\$ 50.75	\$ 987.86
468637		\$ 899.85	\$ 103.00	\$ 1,002.85
128700		\$ 2,110.03	\$ 534.00	\$ 2,644.03
197387		\$ 1,555.42	\$ 336.00	\$ 1,891.42
173733		\$ 2,385.50	\$ 562.00	\$ 2,947.50
176319		\$ 747.50	\$ 45.75	\$ 793.25
285333		\$ 749.48	\$ 361.00	\$ 1,110.48
100454		\$ 1,476.84	\$ 168.00	\$ 1,644.84
130965		\$ 2,909.53	\$ 541.00	\$ 3,450.53
263582		\$ 3,487.12	\$ 930.00	\$ 4,417.12
A30433		\$ 618.13	\$ 103.00	\$ 721.13
361644		\$ 324.15	\$ 589.00	\$ 913.15
Total		\$ 22,512.69	\$ 5,366.75	\$ 27,879.44
WALDEN FLEET				
101425				\$ 1,193.67
224746				\$ 570.98
142569				\$ 1,168.90
119805				\$ 868.98
502864				\$ 280.63
238505				\$ 75.00
209688				\$ 726.94
155391				\$ 1,316.06
335785				\$ 402.46
229068				\$ 47.25
48000				\$ 642.61
308254				\$ 551.06
TOTAL				\$ 7,844.54
SOUTHVIEW CHEVROLET				
110916				\$ 1,839.50
206796				\$ 1,463.17
115526				\$ 1,040.70
179225				\$ 861.88
238123				\$ 2,150.00
197359				\$ 1,864.20

GMAC / HECKER TAX / REGISTRATION DETAIL				
VIN	Customer	Tax	Reg.	Total
449400				\$ 47.25
367916				\$ 862.91
301828				\$ 759.42
149543				\$ 2,034.75
196789				\$ 2,112.13
209552				\$ 1,710.69
113236				\$ 798.00
569209				\$ 771.97
335197				\$ 676.35
135803				\$ 2,399.06
130028				\$ 1,448.75
172621				\$ 863.17
211209				\$ 911.00
246479				\$ 970.50
191680				\$ 908.99
133510				\$ 2,263.00
156050				\$ 873.92
515551				\$ 1,437.27
311910				\$ 884.77
161327				\$ 2,152.93
104720				\$ 1,233.29
991545				\$ 2,704.93
TOTAL				\$ 38,044.50

Account	Serial Number	Date	Am
2079900559389	2963	04/24/2009	\$7.1

Front Image

SHADED AREA MUST GRADUALLY CHANGE FROM BLUE AT TOP TO GREEN AT BOTTOM

GMAC Chicago Business Center
PO Box 466
Orland Park IL 60462-0466

GMAC

0000002963
66-156/531

Pay Exactly

TO THE ORDER OF

****7,844* Dollars and * 54 * Cents

WALDEN FLEET GROUP, INC
715 NORTHRIDGE CT NW
PINE CITY MN 55053

Date

04/15/2009

Net Amount USD

\$****7,844.54

M. L. Calk
Authorized Signature

WACHOVIA BANK, N.A.

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Back Image

ENDORSE HERE

DO NOT WRITE OR SIGN BELOW THIS LINE
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FOR DEPOSIT ONLY
WALDEN FLEET GROUP, INC
PINE CITY, MN 55053
04/15/2009

THE SECURITY FEATURES ON THIS DOCUMENT INCLUDE WATERMARKING
SECURITY LINES AND MICR (MAGNETIC INK CHARACTER RECOGNITION) LINES
AT THE BOTTOM OF THE DOCUMENT. FOR MORE INFORMATION, VISIT WWW.GMAC.COM

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Wachovia certifies that the above image accurately represents the physical item from which it was produced

EXHIBIT

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SHADED AREA MUST GRADUALLY CHANGE FROM BLUE AT TOP TO GREEN AT BOTTOM

DD-30002985

GMAC

62-1547531

Net Amount USD

***27,879* Dollars and *44* Cents

Date
04/16/2009

\$***27,879.44

DENNY HECKER'S CADILLAC-PONT-GMC
12969 60TH ST N
STILLWATER MN 55082

WALNOVIA BANK, N.A.

M. R. Cook
H. P. G.
Authorized Signature

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ENCLOSURE HERE

Denny-Hackens Cadillacs
397 072530

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Account	Serial Number	Date	Am
2079900559389	2964	04/23/2009	\$38

Front Image

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GMAC Chicago Business Center PO Box 486 Orland Park IL 60462-0466	<h1>GMAC</h1>	SS-156/333 Net Amount USD \$***38,044.50
Pay Exactly TO THE ORDER OF SOUTHVIEW CHEVROLET CO 1065 HIGHWAY 110 INVER GROVE HEIGHTS MN 55077	Date 04/15/2009	\$***38,044.50

WACHOVIA BANK, N.A.

M. L. Cole
 Authorized Signature

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ATTORNEYS AND COUNSELORS AT LAW

33 SOUTH SIXTH STREET
SUITE 4100
MINNEAPOLIS, MINNESOTA 55402

WILLIAM F. MOHRMAN

TELEPHONE: 612/341-1074
FACSIMILE: 612/341-1076
WRITER'S E-MAIL: MOHRMAN@MKLAW.COM

July 29, 2009

Via Email, Facsimile and U.S. Mail

Michael W. Haag
Foley & Mansfield, PLLP
250 Marquette Avenue, Suite 1200
Minneapolis, Minnesota 55401

Re: Walden Fleet Group, Inc., Southview Chevrolet, Co. and Denny Hecker's Cadillac-Pontiac-GMC, Inc. v. GMAC, LLC

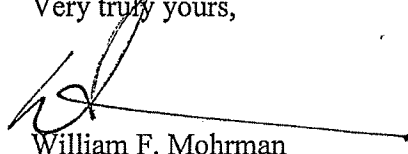
Dear Mr. Haag:

This letter is to confirm that you will accept service for GMAC, LLC. Enclosed and served upon you in the above referenced matter are the following:

1. Summons;
2. Complaint; and
3. Notice and Acknowledgement of Service by Mail.

If you have any questions or concerns do not hesitate to contact me.

Very truly yours,



William F. Mohrman

WFM/mg
Enclosures

cc: Mr. Dennis Hecker (w/eric)(via mail)